

State of California

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Legislative Change No.

02-13

Bill Number: SB 399

Author: Ackerman

Chapter Number: 02-480

Laws Affecting Franchise Tax Board: Corporations Code Sections 161.9, Chapter 11.5 (commencing with Section 1150) to Division 1 of Title 1 of the Corporations Code, 1313, 2115, 15677.2, 15677.3, 15677.6, 15677.7, 15677.8, 15677.9, 16902, 16903, 16904, 16905, 16906, 16907, 16908, 16909, 17540.2, 17540.3, 17540.6, 17540.7, 17540.8, and 25005.1

Government Code Section 12184

Date Filed with the Secretary of the State: September 12, 2002

SUBJECT: Business Organizations Conversions

Senate Bill 399 (Ackerman), as enacted on September 12, 2002, made the following changes to California law:

Corporations Code Section 161.9 is added.

This act, under general corporation law, defines "conversion" as a conversion pursuant to the newly added Chapter 11.5 on conversions, commencing with Section 1150.

Chapter 11.5 (commencing with Section 1150) of Division 1 of Title 1 of the Corporations Code is added.

This act provides specific guidelines for the conversion of a corporation into a domestic limited liability company (LLC), limited partnership (LP), or general partnership.

For the purposes of conversions, "other business entity" means a domestic LLC, LP, general partnership, business trust, real estate investment trust, unincorporated association (other than a nonprofit association), or a domestic reciprocal insurer.

This act provides that the filing with the Secretary of State (SOS) of a statement of conversion, a certificate of conversion, or articles of incorporation in the case of an other business entity converting into a corporation, shall have the effect of the filing of a certificate of dissolution by the converting other business entity. As a result, the converting corporation or converting other business entity is not required to file a certificate of election or dissolution, or certificate of cancellation respectively.

Bureau Director

Roger Lackey

Date

November 13, 2002

No statement or certificate of conversion can be filed with the SOS until a certificate of satisfaction is received from Franchise Tax Board (FTB) verifying that all taxes imposed have been paid or secured. However, for an entity converting from a corporation into a domestic partnership, domestic LP, or domestic LLC, the SOS may file the statement or certificate of conversion without the certificate of satisfaction from FTB.

This act provides that an entity that converts into another entity is for all purposes, other than income and franchise tax purposes, the same entity that existed before the conversion. All rights and property, and liability for all debts, liabilities, and obligations of the converting entity are vested in the converted entity or converted corporation.

A \$250 entity conversion fee will be imposed for a corporation converting into an LLC, LP, or general partnership. The \$250 fee will be charged and collected by the SOS until January 1, 2005. On January 1, 2005, the fee would be reduced to \$150.

Corporations Code Section 1313 is added.

This act specifies that a conversion pursuant to Chapter 11.5 (commencing with Section 1140) constitutes reorganization for purposes of applying the dissenters' rights.

Corporations Code Section 2115 is amended.

This act expands current law regarding foreign corporations to include the first sentence of Section 1151 limiting conversions and Section 1152 regarding the approval of a plan of conversion.

Corporations Code Sections 15677.2, 15677.3, 15677.6, 15677.7, 15677.8, and 15677.9 are amended.

This act expands the current guidelines for the conversion of an LP to include conversion into a corporation, a domestic or foreign general partnership, an LLC, or a foreign LP.

Corporations Code Sections 16902, 16903, 16904, 16905, 16906, 16907, 16908, and 16909 are amended.

This act amends the Uniform Partnership Act of 1994, Article 9, (Conversions and Mergers) to include conversions of a general partnership into a corporation, a domestic or foreign LP, or an LLC.

Corporations Code Section 17540.2, 17540.3, 17540.6, 17540.7, and 17540.8 are amended.

This act expands the current guidelines for the conversion of an LLC to include conversion into a domestic or foreign general partnership, limited partnership, or into a foreign LLC.

Government Code Section 12184 is added, repealed, and added.

This act imposes a \$250 conversion fee on corporations converting into LLCs, LPs, or general partnership. The \$250 fee will be charged and collected by the Secretary of State until January 1, 2005. On January 1, 2005, the fee would be reduced to \$150.

This act is effective and operative January 1, 2003.

This act will not require any reports by the department to the Legislature.